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ALEXANDER L. STEVAS,
CLERK

NO. 84-495

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

RICHARD THORNBURGH, et al.,

Appellants

v.

AMERICAN COLLEGE OF OBSTETRICIANS AND
GYNECOLOGISTS, PENNSYLVANIA SECTION, et al.,

Appellees

On Appeal From The United States
Court of Appeals For The Third Circuit

JOINT APPENDIX

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APPEAL DOCKETED SEPTEMBER 26, 1984.
JURISDICTION POSTPONED APRIL 15, 1985.

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*"J.S. App." refers to the appendix to the Jurisdictional Statement filed in this case.

RELEVANT DISTRICT COURT DOCKET ENTRIES

<u>Date</u>		<u>Proceedings - Docket No.</u> 82-4336
<u>1982</u>		
Oct.	4	Complaint filed.
	29	Plaintiffs' Motion for Preliminary Injunction, Certificate of Service, filed.
	29	Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, filed.
	29	Plaintiffs' Exhibits in support of Motion for Preliminary Injunction, filed (2 volumes).
Nov.	18	Order that a preliminary injunction hearing shall be held on December 2, 1982, etc. A procedural conference shall be held in chambers on December 1, 1982, etc. filed.
Dec.	1	Plaintiffs' Proposed Findings of Fact and Conclusions of Law for Determination of Motion for Preliminary Injunction, filed.

Dec.	1	Defendants' Proposed Findings of Fact and Conclusions of Law for Determination of Plaintiff's Motion for Preliminary Injunction, Certificate of Service, filed.
	1	Stipulation of Uncontested Fact for Determination of Motion for Preliminary Injunction, filed.
	2	Argued Sur: Hearing of December 2, 1982; re: Argument on Plaintiff's Motion for Preliminary Injunction, C.A.V., filed.
	7	ORDER THAT ENFORCEMENT OF THE 24 HOUR WAITING PERIOD IS ENJOINED. THE ACT SHOULD BE UNDERSTOOD TO READ AS IF THE WORDS "AT LEAST 24 HOURS BEFORE THE ABORTION" DO NOT APPEAR IN EITHER §3205(a)(1) or (a)(2), ETC. THE INVALIDITY OF ONE PART OF THE ACT DOES NOT AFFECT THE VALIDITY OF ANY OTHER PART OF THE ACT. ACCORDINGLY, IN ALL OTHER RESPECTS THE PLAINTIFFS' MOTION PRELIMINARILY TO ENJOIN THE OPERATION OF THE ENTIRE ACT IS DENIED, FILED. 12/7/82 Entered and Copies mailed.

Dec. 8 Plaintiffs' Motion for Injunction Pending Appeal, Certification of Notice to Adverse Parties and of Service, Filed.

8 Plaintiffs' Notice of Appeal, Certificate of Service, filed (U.S.C.A. 82-1785). 12/8/82 Copies to: A. Gordon, Esquire, R.T. Williamson, Esquire, D. Spitz, Judge Huyett, III, Clerk U.S.C.A.

8 ORDER THAT PLAINTIFFS' MOTION FOR INJUNCTION PENDING APPEAL IS DENIED, FILED. 12/8/82 Entered and copies mailed.

10 Memorandum, Huyett, J., In Support of Order of December 7, 1982, Filed. 12/16/82 Entered and Copies mailed.

13 Certified copy of Order from U.S.C.A. that the Motion for Injunction Pending Appeal is Granted until further Order of this Court., etc. filed.

23 CERTIFIED COPY OF ORDER FROM U.S.C.A. ORDERED THAT PLAINTIFFS' MOTION FOR INJUNCTION PENDING APPEAL BE AND IS HEREBY GRANTED, AND IT IS FURTHER ORDERED THAT THE COMMONWEALTH'S

MOTION TO VACATE THE STAY HEREINBEFORE GRANTED BY THIS COURT, BE AND THE SAME IS HEREBY DENIED, FURTHER ORDERED THAT THE PLAINTIFFS' MOTION FOR EXPEDITED APPEAL BE AND THE SAME IS HEREBY GRANTED, ETC. FILED.

1983

Dec. 11 Defendants' Motion to Vacate Injunction Against Enforcement of Section 3206 (Parental Consent/Judicial Approval of the Pennsylvania Abortion Control Act, Brief, Certificate, Filed.

21 Plaintiffs' Memorandum in Opposition to Defendants' Motion Vacate Injunction Against Enforcement of Section 3206 of the Pennsylvania Abortion Control Act, Certificate, filed.

1985

Feb. 22 ORDER THAT DEFENDANTS' MOTION TO VACATE THE INJUNCTION AGAINST ENFORCEMENT OF SECTION 3206 OF THE PENNSYLVANIA ABORTION CONTROL ACT IS DENIED, FILED. 2/25/85 entered and copies mailed.

RELEVANT COURT OF APPEALS DOCKET ENTRIES

Date Proceedings -- Docket Nos.
 82-1785 and 82-1846

1982

Dec. 8 Motion by Appellants for Expedited Appeal and for Injunction Pending Appeal, and Appendix in Support of Motion, with service, filed.

 9 ORDER (Hunter and Garth, C.J.) GRANTING MOTION FOR INJUNCTION PENDING APPEAL UNTIL FURTHER ORDER OF THIS COURT; FURTHER DIRECTING APPELLEES TO FILE A BRIEF IN RESPONSE TO APPELLANTS' MOTION BY 12/15/82, FILED.

 10 Motion by Appellees to Vacate this Court's Order of 12/9/82, granting Appellants Motion for Injunction Pending Appeal, with service, filed.

 10 Response by Appellees and Memorandum of Law in Opposition to Appellants' Motion for Injunction Pending Appeal, with service, filed.

 22 ORDER (Hunter, Garth and Sloviter, C.J.) GRANTING PLAINTIFFS' MOTION FOR INJUNCTION PENDING APPEAL; FURTHER DIRECTING THAT THE

COMMONWEALTH'S MOTION TO VACATE THE STAY BE AND IS HEREBY DENIED; FURTHER DIRECTING THAT PLAINTIFFS' MOTION FOR EXPEDITED APPEAL BE AND THE SAME IS HEREBY GRANTED; FURTHER DIRECTING THAT THE CLERK SHALL ESTABLISH THE HEARING SCHEDULE FOR APPEAL; GRANTING MOTION BY LANE, et al., FOR LEAVE TO FILE BRIEF AMICI CURIAE, FILED.

1983

Mar. 17 Clerk's letter to Thomas E. Zemaitis, Esquire (Appellant) and Andrew S. Gordon, Esquire written at the direction of the Court, advising counsel Court has concluded to mark a "hold" pending the decision of the United States Supreme Court in the pertinent cases which have been argued before it.

June 21 Clerk's letter to counsel, written at the direction of the Court, directing supplemental briefing concerning the effect on the present appeal of the United States Supreme Court's recent decision in City of Akron v. Akron Center for Reproductive Health, Inc., Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft, and Simopoulos v. Virginia; Brief of Appellants, cross-appellees due on 7/6/83; brief of appel-

lees, cross-appellants due on 7/29/83; briefs not to exceed 40 pages and the court will decide, after receipt whether further oral argument is desired. (Covers 82-1785 and 82-1846).

1984

May	31	Opinion of the Court remanding to the District Court for further Proceedings in accordance with its opinion.
	31	Judgment issued in lieu of a formal mandate.
June	28	ORDER (Aldisert, Ch.J., Seitz, Adams, Gibbons, Hunter, Weis, Garth, Higginbotham, Sloviter, and Becker, C.J.S) DENYING PETITION FOR REHEARING. CHIEF JUDGE ALDISERT AND JUDGE GIBBONS DISSENT FROM THE DENIAL OF THE PETITION FOR REHEARING TOGETHER WITH SEPARATE STATEMENTS BY JUDGE ADAMS AND JUDGE WEIS, FILED. (Covers 82-1785 and 1846).
Sept.	17	Notice of Appeal to the Supreme Court of the United States by Richard Thornburgh, H. Arnold Muller, Helen O'Bannon, Michael J. Brown, William R. Davis, LeRoy S. Zimmerman and Joseph A. Smyth, Jr., filed

with service (Covers 82-1785 and 82-1846)

1985

April	18	Copy of Order dated April 15, 1985 from the Supreme Court of the United States which reads as follows "THE STATEMENT OF JURISDICTION IN THIS CASE HAVING BEEN SUBMITTED AND CONSIDERED BY THIS COURT, FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION IS POSTPONED TO THE HEARING OF THE CASE ON THE MERITS, Filed. S.C. No. 84-495. (Covers 82-1785 and 1846).
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN COLLEGE OF OBSTETRICIANS : CIVIL
AND GYNECOLOGISTS, PENNSYLVANIA : ACTION
SECTION, et al., :
Plaintiffs :
V. : NO.
THORNBURGH, et al., : 82-4336
Defendants :

STIPULATION OF UNCONTESTED FACTS
FOR DETERMINATION OF MOTION FOR
PRELIMINARY INJUNCTION

Plaintiffs and Defendants, by their respective undersigned counsel, hereby stipulate and agree that, solely for purposes of a determination on plaintiffs' motion for preliminary injunction, the following facts are uncontested. This stipulation is made without prejudice to any party's right to controvert any facts or to prove any additional

facts at any later proceeding in this action.

1. Plaintiff Henry H. Fetterman is a physician licensed to practice medicine and surgery in Pennsylvania who specializes in the practice of obstetrics and gynecology. He received his Doctor of Medicine degree from the University of Pennsylvania in 1947. He served his internship and residency at Allentown Hospital in Allentown, Pennsylvania and was a resident in obstetrics and gynecology at the Hospital of the University of Pennsylvania in Philadelphia. He was certified by the American Board of Obstetrics and Gynecology in 1955. He has taught at the University of Pennsylvania Medical School and at Hahnemann Medical School. He currently serves on the staff of Allentown Hospital and, in the past, has served as Assistant Chief of Staff and as Chief of the Department of

Obstetrics and Gynecology. He is a member of the Lehigh County Medical Society, the Pennsylvania Medical Society and the American Medical Association. He is a Fellow of the American College of Surgeons and of the American College of Obstetricians and Gynecologists. He is currently Chairman⁷ of the American College of Obstetricians and Gynecologists, Pennsylvania Section.

2. Plaintiff Allen J. Kline is a physician licensed to practice osteopathic medicine and surgery in Pennsylvania. He received his medical education at the College of Osteopathic Medicine & Surgery in Des Moines, Iowa. He served his internship at the Cherry Hill Hospital and Medical Center, and was a resident at the Albert Einstein Medical Center, Northern Division, in Philadelphia. He is certified by the American

College of Obstetricians and Gynecologists and is a Diplomate of the National Board of Examiners of Osteopathic Physicians and Surgeons. He is a member of the Philadelphia County Osteopathic Medical Association, the Pennsylvania Osteopathic Association and the American Osteopathic Association. He is a Junior Fellow of the American College of Obstetricians and Gynecologists. He is currently on the staff of the Albert Einstein Medical Center, Northern Division, and he is a member of the Operating Room Subcommittee of that hospital. He is a Clinical Instructor of Obstetrics and Gynecology at the Temple University Medical School and an Assistant Professor of Clinical Sciences at the College of Osteopathic Medicine and Surgery in Des Moines, Iowa. He is a physician at the Northeast Women's Center and has a private practice with two fellow osteopaths

specializing in obstetrics and gynecology.

3. Plaintiff Francis L. Hutchins is a physician licensed to practice medicine and surgery in Pennsylvania. He is a graduate of Howard University College of Medicine. He is certified by the American Board of Obstetrics and Gynecology and is a Diplomate of the National Board of Medical Examiners. He is currently on the staff at Hahnemann Hospital in Philadelphia where he serves as the Director of Ambulatory Affairs and Community Medicine of the Department of Obstetrics and Gynecology and as an Assistant Professor of Obstetrics and Gynecology. He is also Director of the Family Planning Clinic at Hahnemann Medical College and Hospital and is engaged in the private practice of obstetrics and gynecology in Philadelphia.

4. Plaintiff Thomas E. Allen is a physician licensed to practice medicine and surgery in Pennsylvania. He is a graduate of the University of Pittsburgh School of Medicine. He has been a Diplomate of the American Board of Obstetrics and Gynecology since 1964. He is also a Fellow of the American College of Obstetricians and Gynecologists. He is an Associate Clinical Professor in the Department of Obstetrics and Gynecology at the University of Pittsburgh School of Medicine. He is an active staff member of the Magee Women's Hospital and is on the consulting staff of Presbyterian University Hospital in Pittsburgh. He was active in planning, establishing and administering Women's Health Services, Inc. and he is currently the medical director of Women's Health Services, Inc. He also has a private practice with three other physicians specializing

in obstetrics and gynecology.

5. The Pennsylvania Section is an organization of over 1,100 physicians who specialize in the practice of obstetrics and gynecology. The Pennsylvania Section is affiliated with the American College of Obstetricians and Gynecologists ("ACOG"). ACOG is an organization of more than 23,000 physicians throughout the United States who specialize in the practice of obstetrics and gynecology. The members of the Pennsylvania Section and of ACOG are dedicated to providing the highest quality medical care to their patients consistent with currently accepted medical practice.

6. At a meeting of the Advisory Council of the Pennsylvania Section held on September 1, 1982, the provisions of the Pennsylvania Abortion Control Act were reviewed and the Advisory Council unanimously concluded that the Act, if

implemented, would "represent a major intrusion into the rights of the individual resulting in harassment of the patient and markedly interfering with the ability [of the physician] to render good care."

7. Plaintiff Planned Parenthood of Southeastern Pennsylvania (PPSP) is a non-profit corporation which offers pregnancy testing and options counseling at all of its clinic locations by appointment. The Center City Philadelphia Clinic offers these services Monday through Friday. Hours vary at the other locations. Abortion counseling and pregnancy termination are provided on Tuesday, Wednesday, Thursday, and Saturday at PPSP's Center City Philadelphia Clinic.

8. PPSP performs approximately 2,400 first trimester abortions per year. The abortion procedure presently costs full-payment patients \$190.

9. PPSP accepts medical assistance, in lieu of payment from the patient. PPSP is reimbursed \$50 by the Commonwealth of Pennsylvania for procedures performed on medical assistance patients. The physician also receives a payment of \$35 per procedure from the Commonwealth. Approximately 25-30% of the abortions PPSP performs are for medical assistance patients.

10. A patient at PPSP may use medical insurance to pay for her abortion. Although PPSP has contracted with some insurance carriers for direct reimbursement, in most cases PPSP receives the fee directly from the patient who is then reimbursed by her insurance carrier. When necessary, PPSP staff fill out appropriate insurance forms. Approximately 10% of PPSP's abortion patients use insurance to pay for the procedure. Some women choose not to seek reimburse-

ment from their insurance company because they wish to keep the fact that they have had an abortion confidential and fear that family members or fellow workers will learn that they have had an abortion when forms are processed.

11. When a woman, suspecting she is pregnant, presents herself at a PPSP clinic, she is given a pregnancy test and then examined by a nurse practitioner or physician. Women who suspect that they just became pregnant are offered early detection by means of a blood test or special urine test. Once it is determined that she is pregnant, a woman is encouraged to participate in an individual options counseling session with a PPSP counselor. These sessions usually last 30-45 minutes. Minor patients are required to visit the PPSP clinic to participate in options counseling prior to the day of their

abortion.

12. Options counselors are volunteers or staff counselors who have completed a training program certified by Temple University and administered by PPSP. This training program consists of 43 hours of group sessions which focus on factual information regarding adoption, abortion, contraception, referral resources and counseling techniques.

13. Each patient is required to participate in an individual abortion counseling session on the day her procedure is scheduled. In this session, the counselor and the patient discuss the patient's medical history, personal situation and feelings about abortion. The counselor explains the abortion procedure and its risks. Post-abortion care and contraceptive plans are also explored. In this session the informa-

tion necessary for informed consent under current law is presented to the patient. These sessions routinely last 20-30 minutes. If the patient has been accompanied to the clinic by a person they wish to involve in the counseling, that person will be included for part of this session. In many cases the abortion counselor will serve as a support person and accompany the woman through the procedure.

14. Abortion counselors are members of PPSP's counseling staff or college student interns working under the supervision of a staff counselor. Abortion counselors are required to have a college degree and experience in a health or social services related field. All have had on-site training in pregnancy counseling and abortion care and are required to participate in ongoing in-service training.

15. Plaintiff Elizabeth Blackwell Health Center for Women (EBHC) is a non-profit corporation which provides approximately 1,800 first trimester abortions each year at its clinic in Philadelphia. The fee for the procedure is \$190. If a woman wishes to use her medical insurance, as do approximately 5% of EBHC's patients, the fee is paid to EBHC. When necessary, the clinic staff fill out applicable forms so that the patient may be reimbursed. Many women choose not to use their medical insurance because they fear that their employer or spouse will learn that they have had an abortion. EBHC accepts reimbursement from the Commonwealth for the 33% of its patients who are eligible for medical assistance.

16. Pregnancy testing and options counseling are provided at EBHC facilities on Tuesday and Thursday

evenings. Abortions are provided at EBHC facilities on Friday and Saturday by physicians specializing in obstetrics and gynecology who are hired as independent contractors by EBHC.

17. Women approach EBHC in one of two ways. Women who believe they are pregnant but have not yet had a pregnancy test will attend a pregnancy testing and options counseling session on either Tuesday or Thursday evening. At that time they will have a urine test after which a pelvic examination is performed by a physician or nurse practitioner. After it is determined that a woman is pregnant and, if so, how far her pregnancy has progressed, she will speak with one of the volunteer options counselors to explore how she wishes to deal with her pregnancy.

18. Approximately one half of the 2,000 women who came to the EBHC

clinic in this manner in 1981 proceeded to terminate their pregnancies via abortion at the EBHC. Of the 5% of the women who decided to carry their pregnancy to term, approximately one-third participated in EBHC's maternity related services. The remaining 45% of the women either sought first trimester abortions from another provider (who was more conveniently located, operated in a hospital setting, or had general anesthesia available) or required a second trimester abortion which EBHC could not provide.

19. Other women contact EBHC after already having a pregnancy test at a family planning clinic, doctor's office, or other medical facility. If these women are undecided about abortion, they are informed that options counseling is available to them free of charge. If, however, a woman has already decided she wants an abortion, she will be scheduled

for the procedure over the telephone and asked to bring verification from her doctor that she is pregnant. An appointment is usually available within one week's time.

20. In an individual options counseling session, the options counselor and the woman discuss the woman's feelings about her pregnancy and explore whether she wishes to carry the pregnancy to term, place her child for foster care or adoption, or whether she wishes to terminate the pregnancy by abortion. The counselor provides the woman with resources in the community that may help her to effectuate her choice.

21. In addition, the options counselor describes the abortion procedure, outlines birth control methods for future use, and discusses whether the woman has arranged for financial resources and personal support systems

during this difficult period of time. If a friend has accompanied the woman to the Center, the options counselor will first speak with the woman alone. If requested by the patient, the options counselor will invite the accompanying person(s) to join the counseling session.

22. Options counseling at EBHC is performed in as non-judgmental a manner as possible. The average individual counseling session lasts approximately 30 minutes. When a woman is having difficulty making a decision, or wishes to explore more fully her feelings, the counseling session can last up to one hour or the woman can be rescheduled for an additional appointment on another day.

23. Options counselors are volunteers. They must attend a 13-week training program (three hours per week) taught by EBHC's Evening Services

Coordinator, Sandra Herman. They remain under her supervision at all times. In addition, options counselors observe sessions with experienced counselors and staff for several weeks before counseling women on their own. As a result of the volunteer counseling program, EBHC is able to provide in-depth counseling to 60 patients each week for the minimal cost of training and supervising the volunteers.

24. All women are required to attend a group counseling session at EBHC on the day of their abortion, whether or not they have participated in options counseling. In this session, the women explore their feelings about the abortion procedure with a counselor who is trained in the group process. This session is also used to convey the information necessary for informed consent under existing law. The abortion

procedure and its risks are explained and alternatives to abortion are presented. The procedure for routine and emergency post-abortion medical treatment is outlined. Doctors are available to answer medical questions that the counselor is unable to answer. Different forms of contraception are also explained. Each group session lasts approximately 45 minutes.

25. EBHC prefers to do group rather than individual counseling on the day of the abortion because, in the experience of its staff, the group provides a good support system for women attending the clinic. The group makes the abortion procedure less threatening and women feel less isolated.

26. Counselors are trained to watch for women who are ambivalent about their decision to have an abortion. In circumstances where hesitation is shown,

the woman is taken from the group counseling session and given individual counseling. If the counselor believes that the woman is not positive that she wishes to have an abortion, the counselor and the woman discuss it further. The woman may be sent home to have more time to reflect on her choice.

27. Group counselors are trained in-house under the supervision of EBHC's Assistant Director, Cynthia Waters Jones, who has been counseling patients at EBHC for seven years. Training consists of familiarization with the literature, observation and co-counseling with experienced counselors. The training program is completed in approximately 70 hours over a six-week period.

28. Plaintiff Women's Health Services (WHS) is a non-profit corporation which operates a clinic in Pittsburgh, Pennsylvania. Pregnancy testing

and counseling are available at the clinic Monday through Saturday. Abortions are performed Tuesday, Friday, and Saturday. Patients who have already had a pregnancy test may schedule their abortion and a counseling session over the phone. An appointment can usually be scheduled in approximately one week's time.

29. WHS provides approximately 14,300 pregnancy tests and 9,500 first trimester abortions each year. The abortion procedure costs \$190. If a patient wishes to use her medical insurance, as do approximately 15% of WHS's patients, WHS receives the fee from the patient and she is reimbursed by her insurance carrier. When necessary, WHS staff will fill out appropriate insurance forms. Many women choose not to seek reimbursement from their insurance company because they fear their spouse or employer will

learn that they have had an abortion. If eligible for medical assistance, as are approximately 20-25% of WHS's patients, the clinic takes the medical assistance information and seeks reimbursement from the Commonwealth.

30. In 1981, one thousand three hundred twenty-three (14%) of WHS's abortion patients were minors. WHS encourages minors to bring a parent or other adult with them. Because WHS believes that parental involvement should be encouraged, WHS clinic counselors are instructed to offer to speak with a minor's parents if the minor would prefer that to making direct contact herself. When minors refuse to inform their parents under any circumstances, their wishes are respected.

31. When they present themselves at the WHS clinic, all women are examined by a nurse practitioner or physician's

assistant and are given a pregnancy test and blood work-up. In addition, all women are required to have an individual interview with a WHS counselor on the day their abortion is scheduled. These interviews routinely last 40 minutes to an hour. In this interview, the abortion procedure and other alternatives are explained to the patient. If the patient appears ambivalent, the WHS counselor will suggest that a new appointment be made to give the patient more time to consider her decision. On occasion, the WHS clinic will not permit the patient to have an abortion if the staff is convinced of her ambivalence. This is rare, however, because the great majority of WHS's patients have decided to have an abortion before seeking medical attention.

32. More extensive personal counseling is available at no charge to

patients of WHS before or after they have made a decision regarding their pregnancy, or after the abortion procedure, and patients are encouraged to utilize it.

33. Interview counseling is provided at WHS by paraprofessional staff counselors. There are no specific educational requirements for this group. They are selected on the basis of personal qualifications and maturity.

34. Personal counselors at WHS are professional therapists who have master's degrees and at least five years of clinically supervised experience.

35. Both the paraprofessional and professional counselors at WHS begin their employment with 35 hours of medical and counseling orientation and additional on-the-job supervision is provided by the associate medical director, the director of counseling and

training, and the director of clinical services. WHS also has an ongoing training module comprised of weekly in-service training and quarterly individual supervision.

36. Plaintiff Reproductive Health and Counseling Center (RHCC) is a for-profit corporation which operates a clinic in Chester, Pennsylvania, at which approximately 2,900 first trimester abortions are performed each year. An abortion currently costs the client \$190. If a patient has medical insurance, her insurance usually covers all or part of the abortion cost. When necessary, RHCC staff fill out appropriate insurance forms. Approximately 25% of RHCC patients use insurance to pay for their abortion. Other patients who have insurance do not use it for fear that their employer or spouse will discover the abortion. RHCC accepts

reimbursement from the Commonwealth of \$50, with the performing physician also receiving \$50, for the 22% of its patients who are on medical assistance.

37. Pregnancy testing and options counseling are available at RHCC from 9 a.m. to 4 p.m., Monday thru Friday, and 10 a.m. to 1 p.m. on Saturday.

38. A woman's first contact with RHCC is usually by telephone. Women who call RHCC may or may not have had a pregnancy test prior to the call. Before any appointment is made, the women must have had a positive pregnancy test. Telephone counselors refer women to RHCC or to the agency closest to her home or place of work for the test. If a woman comes to RHCC for her pregnancy test, a trained options counselor is always available to talk with her about her pregnancy. If the woman has already had a positive

test when she calls RHCC and wants to terminate her pregnancy, an abortion appointment can be scheduled, usually within one week's time. If the woman indicates uncertainty about her decision, the telephone counselor will recommend her making an appointment to talk further with an options counselor about her decision. All minors who have not involved their parents in the decision are strongly urged to attend counseling.

39. The purpose of an options counseling session is to let the woman know about each of the three options available to her: carrying to term and keeping the child, carrying to term and giving the child up for adoption, and pregnancy termination. The counselor helps the woman to talk about her pregnancy and what each of these three options might mean to her and to people who are important to her (parents,

spouse, partner and friends). The role of the counselor in these sessions is to support the decision of the woman and to provide information which would be necessary for her to act on her decision.

40 At RHCC pre-abortion counseling, in which each woman must participate on the day of her abortion, is different from options counseling because it is generally assumed that the woman has made the decision to terminate her pregnancy. If at any time during the pre-abortion counseling the woman indicates ambivalence or dissatisfaction with her decision, the counselor may recommend additional counseling to allow the woman to explore her options further. In a private session, the counselor discusses with the woman her decision to have an abortion and her feelings about the decision, and reviews her medical history with her. Information necessary

for informed consent under existing law is provided to women in groups of four. The counselor describes the medical procedure, reviews the risks and complications of the procedure and answers questions or addresses concerns.

41. Pre-abortion and options counselors are trained in-house by RHCC's head counselor, Jane Green, who has nine years of counseling experience. They remain under her supervision at all times. Formal training consists of six sessions which explore current attitudes towards abortion and its legal status, pregnancy alternatives and contraception counseling, the clinic's operation, the abortion procedure, and confidentiality. In addition, counselors are required to attend periodic in-house training sessions, seminars and workshops.

42. In his various professional affiliations, plaintiff Fetterman has

had occasion to meet and work with a large number of physicians who provide abortions. It is his belief that the vast majority of these physicians are highly competent, ethical professionals who have a deep and abiding commitment to the well-being of their patients and to the highest standards of medical care.

43. Plaintiff physicians believe that if the provisions of the Abortion Control Act become effective some physicians who currently provide abortions will restrict or forego the performance of abortions.

44. Among the patients of plaintiff physicians and plaintiff clinics are women who have sought abortions because of their age, psychological, familial or financial condition, or because they suffer such diseases or conditions as diabetes, hypertension, cardiac disease, kidney disease, a history of post-partum

hemorrhaging or sickle cell anemia and, therefore, carrying a pregnancy to term would severely endanger their health or life.

45. In 1980, approximately 63,970 Pennsylvania residents obtained abortions in Pennsylvania.

* * * *

84. Determination of gestational age is inexact, with a margin for error of plus or minus two weeks.

* * * *

91. Some women suffer from psychological problems after having undergone an abortion.

92. Some women show a psychological improvement after having undergone an abortion.

93. It is contrary to currently accepted medical practice to perform a non-cosmetic surgical procedure merely

because the patient wishes it to be done; rather, there must be a diagnosis and proper medical indication for the procedure.

94. Plaintiffs Hutchins, Kline and Allen are associated with medical facilities which employ trained counselors to provide information and options counseling to women seeking abortions.

95. Prior to performing an abortion, plaintiff physicians or trained counselors at plaintiff clinics and the clinics where plaintiff physicians perform abortions discuss the abortion decision with the woman and obtain her consent to the procedure.

96. It is generally accepted among physicians, paramedics and medical counselors that the type of information necessary to secure informed consent varies substantially with the individual patient and with the condition to be treated.

97. A fundamental aspect of informed consent is that the patient be told the options available to her or him.

98. There is a general presumption in favor of broad disclosure, but some patients are traumatized by such broad disclosure.

99. In order to promote the fundamental values of patient well-being, individual autonomy and self-determination, patients need relevant information. It is generally agreed that the disclosure process should not be a rote recitation, either orally or in writing of the risks of a medical procedure. Instead, the physician or counselor and the patient should have a thoughtful discussion which involves great sensitivity, subtlety, and sometimes complexity about a matter of great importance to the patient.

100. The physician or counselor must be free to listen to the patient, to ask questions of the patient, and to respond to the patient's concerns. The disclosure process must be tailored to the particular informational and emotional needs of each patient.

101. Most, but not all, women who seek abortions have already made the decision that an abortion would be in their best interest prior to scheduling an appointment with plaintiff physicians or plaintiff clinics.

102. Some women who have decided that an abortion would be in their best interest prior to scheduling an appointment have done so without full knowledge of the agencies and other assistance available for mothers and their children.

103. Plaintiff physicians do not believe that it is their duty to attempt to persuade a patient to carry her preg-

nancy to term when an abortion is medically indicated and when she has already resolved that she desires an abortion.

104. It is the professional opinion of plaintiff physicians that it is not in the best interest of their patients to specifically inform them of every potential physical or psychological risk involved in an abortion procedure no matter how remote and that such information may confuse the patient or create psychological trauma to the patient.

105. In the professional opinion of plaintiff physicians, informing their patients that there may be detrimental physical and psychological effects from an abortion which are not accurately foreseeable would not be in the best medical interest of women seeking abortions. Such information, standing alone, will, in the professional opinion of

plaintiff physicians, only serve to confuse the patient and to make her more afraid without providing any information which will make her decision informed.

106. Some women who have undergone abortions would not have had an abortion if provided with all the information required to be provided by the Act.

107. Some women who have sought counseling regarding whether or not to have an abortion were not provided with the following:

- a. names of public and private agencies which will assist a mother and her child;

- b. A step-by-step description of the particular abortion procedure to be used; or

- c. information on the level of pain they will experience during the abortion procedure.

108. If a woman has doubts about the abortion because of concern about the state of the fetus, the availability of information such as that set forth in Section 3205(a)(2) of the Act describing fetal characteristics may be helpful.

109. For many women, the decision to have an abortion is an extremely difficult and painful one, and it is a decision which they reach only after a good deal of thought; to offer a woman the opportunity to read a description of fetal characteristics or a list of agencies in situations where abortion has been determined to be the only viable alternative may create anxiety, disquiet and fear.

110. Based on their professional experience as clinic directors, it is the plaintiff clinic directors belief that once the decision to have an abortion

has been made, exposure to literature required by Section 3208 undermines plaintiff clinics' ability to counsel patients according to individual needs of the patients and forces clinic personnel to counsel patients in a manner inconsistent with their professional judgment.

111. Plaintiff physicians believe that the information required to be given to patients seeking abortions by Sections 3205(a)(2)(i) and (ii) of the Act is legal advice which is beyond their personal expertise and the expertise of their staffs and that they would not be equipped to answer fully and completely questions which the disclosure of this information might raise with their patients.

112. It is the professional opinion of plaintiff physicians that informing their patients of the poten-

tial availability of medical assistance or support from the father of the child is not medically indicated in all cases and may mislead their patients.

* * * *

119. The Section 3205 requirement that physicians directly provide informed consent and the Section 3204 requirement that physicians provide a private medical consultation will require extensive changes in the RHCC's operating schedule. Physician schedules will need to be expanded to include two to three medical consultation and counseling sessions per week, with women scheduled for abortions at least 24 hours later. Because of doctors' normally busy office hours, surgery and hospital schedules, it may be difficult to find available physicians to provide these services, especially during the evening hours

which are most convenient for patients. The physician consultation and counseling may increase the need for physician time by 20 hours per week.

120. The Section 3205 requirement that physicians personally provide information necessary for informed consent will require plaintiff clinics to change their current practices and will increase costs to the plaintiff clinics. Plaintiff clinics intend to pass these increased costs along to their patients.

* * * *

182. Plaintiff physicians have had patients who have suffered from life endangering conditions such that carrying their pregnancies to term would have caused them severe physical harm or death; in those instances, plaintiff physicians have considered it necessary to terminate their pregnancies by

inducing labor at a time when the fetus may have become viable; in such circumstances, plaintiff physicians utilized the procedure most likely to preserve the life of the fetus, but the fetus did not survive because it was not viable; plaintiff Allen has induced labor up to 32 weeks after gestation when his diagnosis revealed that his patient was carrying a grossly abnormal fetus.

183. Plaintiff physicians have observed beating of the heart and involuntary movements of the muscles of the fetus as early as the eighth week of gestation; plaintiff physicians have observed electrical activity of the brain of the fetus even earlier than eight weeks; a fetus of eight weeks gestational age would not be capable of sustained survival outside the uterus.

184. Neonatal studies have shown that a 27-week-old fetus's chance of

survival under ideal conditions is now approaching 10%.

185. It is the professional opinion of plaintiff physicians that the decision to call in a second physician for post-viability abortions should be left to the attending physician.

186. It is the professional opinion of plaintiff physicians that the requirement of a second physician to preserve the fetus is an unnecessary interference with a physician's best medical judgment.

187. The presence of a second physician will increase the cost of an abortion.

* * * *

192. During the past several years, numerous abortion providers, both in Pennsylvania and throughout the country have been the object of threatened violence or actual violence, including

firebombings, arson, shootings, vandalism, sit-ins and demonstrations.

193. Plaintiff clinics and physicians currently report medical data, including data relating to birth and death, to the Commonwealth as required by existing law.

194. The reporting requirements of Section 3214 will require plaintiff clinics to change their current practices

and will increase costs to the clinics. Plaintiff clinics intend to pass along these increased costs to their patients.

* * * *

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN COLLEGE OF :
OBSTETRICIANS AND :
GYNECOLOGISTS, PENNSYLVANIA :
SECTION, et al., :
Plaintiffs :
V. : CIVIL
: ACTION
: NO. 82-4336
RICHARD THORNBURGH, et al., :
Defendants :

DEFENDANTS' MOTION TO VACATE INJUNCTION
AGAINST ENFORCEMENT OF SECTION 3206
(PARENTAL CONSENT/JUDICIAL APPROVAL)
OF THE PENNSYLVANIA ABORTION CONTROL ACT

Defendants, by their counsel,
hereby move this Court for an order
vacating the injunction against enforce-
ment of Section 3206 of the Pennsylvania
Abortion Control Act. In support of this
motion, defendants aver, as follows:

1. Section 3206 of the Pennsyl-
vania Abortion Control Act prescribes

standards to be followed in abortions
for women under the age of 18 and women
who have been adjudged incompetent. 18
Pa. Cons. Stat. §3206.

2. This Court previously denied
a preliminary injunction against enforce-
ment of Section 3206. American College
of Obstetricians and Gynecologists,
Pennsylvania Section v. Thornburgh, 552
F.Supp. 791, 800-803 (E.D. Pa. 1982).

3. The Court of Appeals held
that enforcement of Section 3206 should
be enjoined until the Pennsylvania
Supreme Court issued rules assuring that
court proceedings contemplated by the
statute would be carried out confiden-
tially and with appropriate dispatch.
American College of Obstetricians and
Gynecologists, Pennsylvania Section v.
Thornburgh, 737 F.2d 283, 296-297 (3d
Cir. 1984).

4. On November 26, 1984, the Pennsylvania Supreme Court adopted new rules, effective immediately, governing proceedings under Section 3206. A copy of the new rules is attached to defendants' supporting brief.

5. As we explain more fully in the accompanying brief, the new rules more than adequately ensure that proceedings pursuant to Section 3206 are conducted quickly and confidentially.

WHEREFORE, defendants respectfully request that the injunction against enforcement of Section 3206 be vacated.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN COLLEGE OF : CIVIL
OBSTETRICIANS AND : ACTION
GYNECOLOGISTS, PENNSYLVANIA, : NO.
: 82-4336
v. :
RICHARD THORNBURGH, et al. :

O R D E R

NOW, February 22, 1985, upon consideration of defendants' motion to vacate injunction against enforcement of section 3206 of the Pennsylvania Abortion Control Act, plaintiffs' response thereto, the memoranda of law submitted by the parties, and because:

1. Section 3206 of the Pennsylvania Abortion Control Act provides that unemancipated women under the age of eighteen must secure parental consent or judicial approval prior to obtaining an

abortion. Noting that "the state must provide 'an alternative procedure whereby a pregnant mother may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests,'" the Third Circuit held that section 3206 should be enjoined until such time as the state has promulgated regulations governing judicial proceedings under section 3206. American College of Obstetricians v. Thornburgh, 737 F.2d 283, 296-297 (3d Cir.1984), quoting City of Akron v. Akron Center for Reproductive Health, 103 S.Ct. 2481, 2498 (1983).

2. Defendants filed an appeal from the Third Circuit's ruling on September 26, 1984. Thornburgh v. American College of Obstetricians, 53 U.S.L.W. 3291 (U.S. September 26, 1984) (No. 84-495). This appeal is still

pending, and among the questions presented for appeal is the Third Circuit's holding pertaining to section 3206.

3. On November 26, 1984, the Pennsylvania Supreme Court adopted new rules governing proceedings under section 3206. Defendants now seek an order vacating the injunction on section 3206 in light of the new regulations.

4. Federal Rule of Civil Procedure 62(c) provides that a court may modify an injunction during the pendency of an appeal as the court deems necessary "for the security of the rights of the adverse party." This rule has been described as "merely expressive of a power inherent in the court to preserve the status quo where, in its sound discretion, the court deems the circumstances to justify." Ideal Toy Corporation v. Sayco Doll Corporation, 302 F.2d

623, 625 (2d Cir. 1962), quoting 7 Moore ¶ 62.05. In Ideal Toy, the court refused to vacate an injunction when an appeal was pending absent permission from the higher court to reopen. Similarly, in United Parcel Services v. United States Postal Service, 475 F. Supp. 1158, 1163 (3d Cir. 1979), Judge Becker held that when an appeal is pending from a preliminary injunction, a district court has jurisdiction under Rule 62(c) to grant only such relief from the injunction as may be necessary to preserve the status quo pending appeal. See also Morning Telegraph v. Powers, 450 F.2d 97 (2d Cir. 1971), cert. denied, 405 U.S. 954 (1972).

5. I conclude that an order dissolving the injunction on section 3206 imposed by the Third Circuit is not necessary to preserve the status quo. Rather, at this time, an order suspending

the injunction would significantly alter it. Therefore, I am without jurisdiction to issue the order defendants seek. IT IS ORDERED that defendants' motion to vacate the injunction against enforcement of section 3206 of the Pennsylvania Abortion Control Act is DENIED.

Daniel H. Huyett, 3rd, Judge